

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 626

(Senator Carter)

Judicial Proceedings

Law Enforcement Officers - Use of Force

This bill establishes (1) various requirements and prohibitions regarding the use of force by law enforcement officers; (2) a duty for a law enforcement officer to intervene; (3) criminal penalties for violations; and (4) a related civil cause of action. By July 1, 2022, each local law enforcement agency must establish, maintain, and implement specified policies and guidance for law enforcement agencies and include funds in its annual budget for specified training and assessments. Each local law enforcement agency also must post on its website data regarding the use of force, as specified. Further, by December 31, 2021, and by each December 31 thereafter, the Attorney General must review a representative sample of specified policies adopted by local law enforcement agencies; if a law enforcement agency is not in compliance, the Attorney General must notify the Executive Director of the Governor's Office of Crime Prevention, Youth, and Victim Services (GOCPYVS) and the Comptroller, and the local law enforcement agency may not receive funds administered through the State Aid for Police Protection (SAPP) Fund.

Fiscal Summary

State Effect: State expenditures (multiple fund types) may increase for some State agencies with law enforcement units. Special fund expenditures for the State Insurance Trust Fund (SITF) may increase due to the civil cause of action, and general fund expenditures may increase as a result, as discussed below. Potential minimal increase in general fund revenues and expenditures due to the bill's criminal penalty provisions.

Local Effect: Local expenditures may increase due to the civil cause of action. Beginning in FY 2023, local expenditures may increase due to required training and assessments. Potential minimal increase in local revenues and expenditures due to the bill's criminal penalty provisions. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Use of Force – Authorizations and Prohibitions

A law enforcement officer is authorized to use force only (1) when it is necessary force; (2) when reasonable alternatives have been exhausted; and (3) until its use has accomplished a legitimate law enforcement objective. A law enforcement officer must (1) immediately modulate force as the threat diminishes and (2) cease its use as soon as the person is under the officer's control, no longer poses an imminent threat, as specified, or the officer determines that force will no longer accomplish a legitimate law enforcement objective, as specified. If the use of force against a person results in death and is inconsistent with the authorization for its use, the law enforcement officer may be charged with manslaughter or murder.

A law enforcement officer is prohibited from using lethal force against a person unless the use of lethal force protects the officer or another person from death or serious physical injury, the use of lethal force presents no substantial risk of injury to a third person, and all reasonable alternatives have been exhausted. Lethal force is not justified if a person poses a danger only to himself or herself. If lethal force is used against a person in a manner inconsistent with these provisions but its use does not result in death, the law enforcement officer may be charged with reckless endangerment or assault.

Duty to Intervene and Notify Supervisor

The bill requires a law enforcement officer to make a reasonable attempt to stop or prevent the use of "excessive force" if the officer knows or reasonably should know that another law enforcement officer is using or intends to use excessive force. In addition, if a law enforcement officer knows or reasonably should know that another law enforcement officer has used excessive force, the law enforcement officer must immediately notify the law enforcement officer's supervisor. A police officer may not knowingly violate these provisions.

Medical Treatment

With specified exceptions, a law enforcement officer must promptly provide or make reasonable efforts to obtain medical treatment for a person injured as a result of a law enforcement officer's use of force.

Penalties

A law enforcement officer who recklessly fails to act in accordance with any of the bill's provisions is guilty of a misdemeanor and on conviction is subject to a maximum penalty of 5 years imprisonment. A law enforcement officer who knowingly and willfully violates any of the bill's provisions is guilty of a misdemeanor and on conviction is subject to a maximum penalty of 10 years imprisonment.

Civil Action

A person may file a civil action with any court of competent jurisdiction for the use of force by a law enforcement officer in a manner inconsistent with the bill's provisions, as specified.

Local Law Enforcement Agency Requirements

By July 1, 2022, in consultation with specified entities, each local law enforcement agency must establish, maintain, and implement policies and guidance for law enforcement agencies on prohibited actions relating to the use of force, specified principles regarding the use of force, protecting officers from retaliation or discipline relating to the duty to intervene and report the improper use of force by another officer, and requiring each law enforcement agency to document all uses of force, investigate uses of force, assess the use of force, and review use of force investigations, as specified.

By July 1, 2022, each local law enforcement agency must include funds in its annual budget for (1) training and assessment of training and (2) assessing supervisors in the reinforcement of training objectives in real-world scenarios. By December 31, 2021, and every six months thereafter, each local law enforcement agency must post on its public website specified data regarding the use of force.

Current Law:

Use of Force

Each law enforcement agency must require a police officer who is involved in a use of force incident in the line of duty to file an incident report regarding the use of force by the end of the officer's shift unless the officer is disabled.

Common law allowed police officers to use any force necessary to effectuate a felony arrest; however, in *Tennessee v. Garner*, 471 U.S. 1 (1985), the U.S. Supreme Court held that, under the Fourth Amendment, when a law enforcement officer is pursuing a fleeing suspect, the officer may not use deadly force to prevent escape unless "the officer has

probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.” In *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court expanded its definition to include the “objective reasonableness” standard. The court held that the Fourth Amendment “reasonableness” inquiry is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.” In *Randall v. Peaco*, 175 Md. App. 320 (2007), the Maryland Court of Special Appeals applied principles of the *Graham v. Connor* case and stated that the test for determining the objective reasonableness of an officer’s conduct for purposes of deciding a claim of excessive force brought under the State constitution is the test the Supreme Court announced in *Graham v. Connor*.

Police Officer Training

Chapter 519 of 2016 reconstituted the former Police Training Commission as the Maryland Police Training and Standards Commission (MPTSC), an independent commission within the Department of Public Safety and Correctional Services. MPTSC operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. In consultation and cooperation with various entities, it also sets minimum qualifications for instructors and certifies qualified instructors for approved training schools.

MPTSC certifies persons as police officers who have met commission standards, including submission to a criminal history records check and a specified psychological consultation. An individual who is not satisfactorily trained in the 12-month probationary period may not be employed as a police officer, and a police officer may not serve after certification has been revoked, suspended, or allowed to lapse.

MPTSC requirements include, among other things, the adoption and recommendation of best practices and standards for use of force and that the curriculum and minimum courses of study include special training, attention to, and study of the application of antidiscrimination and use of force de-escalation training at entrance-level police training and at least every two years for in-service level police training conducted by the State and each county and municipal police training school.

Governor’s Office of Crime Prevention, Youth, and Victims Services

The State provides regular and supplemental grants to local government police operations through various programs and funds administered by GOCPYVS. GOCPYVS plans,

promotes, and funds efforts with government entities, private organizations, and the community to advance public policy, enhance public safety, reduce crime and juvenile delinquency, and serve victims. Examples of grants administered by GOCPYVS include the Maryland Violence Intervention and Prevention Program Fund, the Community Program Fund, and the SAPP Fund.

State Expenditures: State expenditures (multiple fund types) may increase, potentially significantly, for some State agencies with law enforcement units to update and provide additional training to law enforcement officers due to the bill's changes relating to the use of force. For example, the Maryland Department of Transportation (MDOT) advises that additional training costs for Maryland Transit Administration Police could exceed \$300,000 annually beginning in fiscal 2022. MDOT further advises that the Maryland Transportation Authority may also incur costs. The Department of Legislative Services (DLS) is unable to independently verify these potential costs at this time.

The Office of the Attorney General (OAG) advises that conducting the required review of a sampling of policies and providing notifications under the bill necessitates a full-time assistant Attorney General and a paralegal at an estimated cost of \$186,588 in fiscal 2022, increasing to \$247,257 in fiscal 2026. DLS disagrees and advises that the requirement can likely be handled with existing resources, as OAG is not required to thoroughly analyze or litigate any of the policies. If existing resources prove inadequate in future years, OAG can request additional personnel through the annual budget process.

Special fund expenditures for SITF may increase. The bill authorizes a civil cause of action for improper use of force by law enforcement officers. Such actions will likely result in an increase in claims under the Maryland Tort Claims Act (MTCA). Claims under MTCA are paid out of SITF, which is administered by the Treasurer's Office. The Treasurer's Office advises that there are approximately 150 to 175 cases in litigation under MTCA each year. One-third of the cases involve the actions of law enforcement officers. The new civil cause of action is likely to increase the number of cases and, as a result, increase special fund expenditures for SITF. General fund expenditures may increase for State agencies subject to higher SITF premiums/assessments if SITF incurs losses from MTCA payments as a result of the bill. While it is not possible to reliably estimate the increase in SITF expenditures, law enforcement officers are regularly trained in the proper use of force. Therefore, a significant increase is not expected.

Since the bill creates a new criminal offense and penalty, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) must adopt regulations pertaining to the new offense. This is within the routine activities completed by MSCCSP and can be handled with existing resources.

GOCPYVS and the Comptroller's Office did not respond to requests for information regarding the fiscal effect of the bill; however, it is assumed that both agencies can meet the bill's requirements with existing resources. Further, it is assumed that the bill does not affect the overall finances of the SAPP Fund.

Local Fiscal Effect: Beginning in fiscal 2023, local government expenditures may increase, likely minimally, for local law enforcement agencies to include in their annual budgets funds for training and assessment of training and assessing supervisors in the reinforcement of training objectives in real-world scenarios. In addition, local law enforcement agencies may require additional staff to compile the required data under the bill.

While it is not possible to reliably estimate the increase in local expenditures due to civil causes of action, law enforcement officers are regularly trained in the proper use of force, which will only be strengthened under the bill's provisions. Therefore, a significant increase in local expenditures is not expected.

The bill's provisions regarding the establishment of policies and the SAPP Fund are not anticipated to materially affect local finances.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 139 (Delegate D.M. Davis, *et al.*) - Judiciary.

Information Source(s): Maryland Commission on Civil Rights; Howard and Montgomery counties; City of Laurel; Office of the Attorney General; Maryland State Treasurer's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Baltimore City Community College; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Morgan State University; Department of Legislative Services

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rh/lgc

Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510